

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MARJORIE FERRELL, <i>et al.</i> ,)	
)	
Plaintiffs,)	No. C-1-01-447
)	
v.)	Judge Sandra S. Beckwith
)	
WYETH-AYERST LABORATORIES,)	Magistrate Judge Timothy S. Hogan
INC., <i>et al.</i> ,)	
)	
Defendants.)	

**CO-LEAD COUNSEL’S MEMORANDUM IN SUPPORT OF THEIR
MOTION FOR AWARD OF PARTIAL REIMBURSEMENT OF EXPENSES**

Co-Lead Counsel seek an award of \$325,000, a partial reimbursement of expenses they incurred in connection with services rendered in this action. As part of the settlement of this action, Defendants have agreed to this amount. *See* Settlement Agreement (Doc. No. 177, #7) ¶ 12. All the expenses incurred by Plaintiffs’ counsel were necessary to the prosecution of this litigation and are reasonable in amount. A large portion of the expenses incurred consists of fees paid to experts who were instrumental in, among other things, getting the Classes certified, evaluating the case and settling it. Another significant part of the fees was attributable to document review and coding and participation in depositions, both of which were necessary to manage the substantial number of document involved in the litigation. All of Plaintiffs’ expenses, as set forth more fully in the Declaration of Jennifer Fountain Connolly (“Connolly Declaration”) (Ex. A), were expenses routinely charged to hourly-fee paying clients, such as copying charges, computerized legal research costs and travel expenses, and were reasonable and appropriate.

Pursuant to Fed. R. Civ. P. 23(h), in a certified class action “the court may award . . . nontaxable costs authorized . . . by agreement of the parties.” An award of attorneys' fees and expenses lies within the sound discretion of the trial court. *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 248 (S.D. Ohio 1991) (citing *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974), *cert. denied*, 422 U.S. 1048 (1975)). Plaintiffs' counsel are entitled to be reimbursed for all reasonable expenses necessary for the prosecution of litigation. Here, where Plaintiffs are only seeking *partial* reimbursement of their expenses, their request is particularly reasonable given awards of expenses in other class actions before this Court. *See In re Broadwing, Inc. ERISA Litig.*, Case No. 1:02-cv-00857, 2006 U.S. Dist. LEXIS 72609 (S.D. Ohio Oct. 5, 2006) (Watson, J.) (where court awarded \$2.53 million in attorneys' fees, “[p]laintiffs' Counsel have unreimbursed expenses of \$ 99,801.36. The expenses are summarized by category in the Connor Declaration and detailed in the respective time and billing records of Plaintiffs' Counsel. They are reasonable and necessary expenses, including photocopying, postage, travel, lodging, filing fees and Pacer expenses, long distance telephone, telecopier, computer database research, depositions expenses, and expert fees and expenses.”); *Robinson v. Ford Motor Co.*, NO: 1:04-CV-00844, NO: 1:04-CV-00845, 2005 U.S. Dist. LEXIS 12071 (S.D. Ohio June 16, 2005) (Spiegel, J.) (awarding \$1.6 million in combined fees and expenses); *In re Telectronics Pacing Sys.*, 137 F. Supp.2d 1029, 1046 (S.D. Ohio 2001) (awarding expenses of \$2,337,386.51 with fee award of \$17,480,000 as reasonable, verifiable, appropriate under the circumstances).

The expenses advanced by Class Counsel were reasonable and necessary to the prosecution of this case and should therefore be reimbursed from the Settlement Fund. Defendants' counsel have agreed to pay these expenses as part of resolving this matter. Class

Counsel's request is reasonable. As set forth in the Connolly Declaration, Class Counsel segregated expenses incurred in a parallel action, *Elizabeth Blevins v. Wyeth-Ayerst Labs., Inc.*, Case No. 324480 ("*Blevins*"), from expenses incurred in this action. *See id.* ¶¶ 5-6. In addition, and perhaps more importantly, in recognition of the difficulties faced in this litigation, Plaintiffs' counsel are forgoing \$125,419.48 in expenses they incurred as well as any award of attorneys' fees. *See* Connolly Decl. ¶ 9.

WHEREFORE Plaintiffs respectfully request that this Court enter an order, substantially in the form attached hereto as Exhibit B, awarding them a partial reimbursement of their expenses, in the amount of \$325,000, and all other relief that this Court deems just and proper.

Dated: June 1, 2007

Respectfully submitted,

/s/ Patrick E. Cafferty
One of Plaintiffs' attorneys

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CERTIFICATE OF SERVICE

I, Patrick E. Cafferty, hereby certify that a copy of the foregoing *Co-Lead Counsel's Memorandum in Support of Motion for Award of Partial Reimbursement of Expenses* was electronically filed. Those attorneys who are registered with the Electronic Filing System may access these filings through the Court's System, and notice of these filings will be sent to these parties by the operation of the Court's Electronic Filing System.

Dated: June 1, 2007

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